IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 36 OF 2007
IN
CRIMINAL APPEAL NO. 59 OF 2007

Mohan Ganpati Sathe ..Appellant
(Ori. Accused No.1)
versus

State of Maharashtra ..Respondents

Mr. B. R. Patil i/b. S. P. Kadam for the Appellant - Original Accused No.1.

Mr. P.A. Pol, APP for the Respondents - State.

CORAM : D. G. DESHPANDE, &
SMT. NISHITA MHATRE, JJ.

DATE : 19TH APRIL, 2007.

P.C.

1. Heard learned Counsel for the Appellant -original accused No.1 and the learned APP for the State.

2. The appellant - original Accused No.1 was tried along with others for offences under Section 302, 307 read with 34, 149 of I.P.C. Rest of the accused are convicted under Section 325 r/w. 34 of IPC. The trial court has come to the conclusion

that there was no unlawful assembly. The appellant - original accused No.1 is also convicted under Section 325 r/w. 34 of IPC and other offences, but, mainly, he is convicted under Section 302 and 307 of IPC.

3. Counsel for the appellant - original accused No.1 mainly contended that even though it is admitted by the prosecution that five persons out of 8 from the side of the accused has received injuries in Marpit, the prosecution did not try to explain the injury on the persons of the accused. The appellant - original accused No.1 has also sustained injuries. Though P.W. 9 Dr. Shinde was examined he produced medical certificate regarding the injuries suffered by those persons from the side of the victim i.e. complainant. But it is an admitted fact that on the complaint of the appellant - original accused No.1 a case under Section 307 was filed against the persons from the side of the complainant and in that medical certificate of all those five accused including the appellant - original accused No.1 are filed. It was necessary for the Court to get those certificates on record and it was also necessary for the prosecution to

prove the injuries of the accused. That has not been admittedly done.

4. Secondly, according to the prosecution on 17.11.1997, there was a Marpit or assault between the complainant and some of the accused but the appellant - original accused No.1 was not present there. Then in the second assault on 19.11.1997 at about 9 p.m. the Marpit has already started between the two side and at that time the appellant - original accused No.1 came from the side of his field, he had a gun in his hand. It is alleged by the prosecution that he fired two shots from the gun by which Manik died and Pandharinath was injured.

5. It was the defence of the appellant - original accused No.1 that though he had brought a gun, Manik, Pandharinath and others tried to snatch gun from him and at that time gun went off twice, by which Manik was died and Pandharinath was injured. Therefore, according to the counsel for the appellant - original accused No.1 this is not at all a case of murder. There could not be any intention on the part of the appellant - original accused No.1 to kill anybody because he does not belong to any of

the aforesaid two groups.

6. The learned APP on the other hand contended that from the evidence of ballistic expert, it is clear that two gun shots were fired from a distance of more than 10 feet. This contradicts the story of the defence that there was any attempt to snatch the gun from the hand of the appellant - original accused No.1 by some of the witnesses of the complainant and gun went off twice.

7. Even though, according to us, it cannot be said that in the circumstances, at least, at this stage that the appellant - accused No.1 had any intention to kill Manik or to injure Pandharinath, though he may have knowledge. There are no criminal antecedents against him. He was not a party to the dispute earlier or even on that occasion till his arrival. The injuries of the five persons from the side of the accused have not been explained by the prosecution. In addition the appellant - original accused No.1 was on bail during trial. In the circumstances, this application is required to be allowed.

8. In the result, we allow the Application. The appellant - original accused No.1 be released on P.R. bond of Rs.15,000/- (Rupees Fifteen Thousand) with one or two solvent sureties in the like amount. He will attend the concerned police station once in every two months till the appeal is disposed of. His substantive sentence has been suspended pending Appeal. Fine, if any, will have to be paid by the appellant - original accused No.1 before he is released on bail. Application disposed of accordingly.

(SMT. NISHITA MHATRE, J.) **(D.G. DESHPANDE, J.)**